GOVERNMENT OF MYSORE

LABOUR AND MUNICIPAL ADMINISTRATION DEPARTMENT (LABOUR).

Labour Dispute :—Industrial Dispute between the Workmen and the Management of M/s. Mandya National Paper Mills Limited, Belagola, Mandya District.

Award of the Labour Court, Bangalore, published.

Read the following papers :

(1) Letter No. 1096–1097/66–67, dated 2nd December 1966, from Shri P. T. Kadkol, Presiding Officer, Labour Court, Bangalore.

BEFORE THE PRESIDING OFFICER, LABOUR COURT, BANGALORE.

Dated this 2nd day of December 1966.

Present :

Sri P. T. Kadkol, B.Sc., LL.B., .. Presiding Officer.

Reference No. 67 of 1965.

Workmen represented by the General Secretary, The Mandya National Paper Mills Workers' Association, Belagola, Mandya District. ... ... *I Party*

and

The Management of M/s. Mandya National Paper Mills Ltd., Belagola, Mandya District. ... *II Party.*

Reference

Government Order No. PLM 439 LLD 65, dated 14th October 1965.

AWARD

The Government of Mysore being of opinion that an industrial dispute exists between the workmen and the management of M/s. National Paper Mills Ltd., Belagola, have referred it for adjudication to this court under Section 10 (1) (c) of the Industrial Disputes Act, 1947, by their Order No. PLM 439 LLD 65, dated 14th October 1965 setting out the following points of dispute for adjudication :—

> "Is the Management of Messrs. Mandya National Paper Mills Ltd., Belagola, justified in dismissing Sri Syed Pasha, T. No. 642, Electrical Section; If not, is he entitled to reinstatement with back wages and continuity of service?"

2. The cause of the aggrieved workman has been sponsored by the Mandya National Paper Mills Workers' Association, Belagola, which is a registered trade union. This Union, as representing the workmen is the first party and the management of the Paper Mills is the second party in this proceeding. The President of the First Party Union is Sri T. V. Srinivasa Rao, Advocate, Mysore and he has appeared for the Union. Mr. B. R. Puttanajappa has appeared for the Management.

3. The Second Party has a set of certified standing orders, which have been produced at Ex. M. 24. Under Standing Order No. XIX (7) habitual absence without leave or permission or absence without leave for more than 10 consecutive days, on the part of a workman is "misconduct" for which one of the prescribed punishments is dismissal from service.

4. The workman under Reference, Syed Pasha was charge-sheeted by the Management on 12th July 1965 from misconduct on the ground that he was remaining habitually absent form duty without leave or permission and this act on his part was prejudicial to good conduct and subversive of discipline. On this charge the Management held a domestic enquiry against him, found him guilty of the charge and dismissed him from service by an order dated 26th July 1965. This dismissal has given rise to the present dispute.

5. Sri T. V. Srinivasa Rao, the President of the Union has submitted the statement of claims. The domestic enquiry held by the Management against Syed Pasha has been admitted therein. The enquiry, however, has been attached on the following grounds :—

> The Enquiry Officer did not give full and complete opportunity to the worker, to defend himself properly. The Enquiry Officer started with a prejudice in as much as the Management was bent upon terminating the said worker vindictively since he was one of the several important workers who initiated the starting of a new trade union. The Management failed in its attempt to pursuade Syed Pasha to refrain from forming the new Union. Hence he was victimised. As regards absence from duty, the said worker has been signalled out for being proceeded against. There are several workers who have remained absent. The termination of the services of Syed Pasha is illegal, contrary to law and

justice. Hence he should be reinstated with back wages and continuity of service.

6. The Second Party has submitted its statement of objections, through its Secretary. All allegations of victimisation and unfair labour practice have been denied. The allegations made against the Enquiry Officer and the grounds of attack made on the enquiry itself also have been denied. Then it is contended that Syed Pasha was habitually remaining absent and on many previous occasions also, he had been dealt with and given lesser punishments taking a lenient view of the matter. It is further contended that, Syed Pasha had been found guilty of misconduct and dismissed from service, after a fair enquiry and hence the Reference requires to be rejected.

7. As Mr. Puttananjappa submitted that the Management would be leading additional evidence to support the charge against the delinquent, the following issues have been framed and set down for hearing (*Vide* Order Sheet dated 19th May 1966).

1. Does the Second Party prove the misconduct with which the aggrieved workman was charged and dismissed?
2. Does the First Party prove that the aggrieved workman has been victimised for reasons alleged?
3. Is he entitled to be reinstated with or without back wages?

Parties were directed to lead evidence with respect to these issues.

8. The hearing commenced in Mysore Camp on 22nd June 1966. The first witness for the Management Mr. Doddannavar (M. W. 1) was examined in chief. Then he was cross-examined in part by Mr. T. V. Srinivasa Rao. Documents produced by the Management were marked in evidence. For want of time in that camp, further hearing was adjourned. It was fixed in Mysore Camp again on 9th August 1966. Notice issued to the first party by registered post, was served on the President Mr. Srinivasa Rao on 2nd August 1966 (Ex. C2). But on 9th August 1966 neither the aggrieved workman nor Mr. Srinivasa Rao nor any body on behalf of the First Party appeared in Court. Hence, to give another chance to the First Party, I adjourned the hearing and directed the issue of a notice to the First Party. The case was once again fixed for hearing at Mysore on 21st September 1966. The notice of this date, sent by registered post was received by Mr. Srinivasa Rao on 3rd September 1966 (Ex. C. 1). In spite of

it only the Second Party appeared on 21st September 1966. Neither the aggrieved workman nor Mr. Srinivasa Rao nor any one else was found present on behalf of the first party. No request for adjournment also was received from the First Party. Hence, I conducted the further hearing of the case in the absence of the first party. On 21st September 1966, Doddannavar's further deposition was recorded. Another witness by name Chandra Shekar (M. W. 2) was examined by the Second Party.

9. Since the Management has chosen to lead evidence to prove the charge against Syed Pasha, the entire issue is open before me. So it is necessary to determine whether the charges of habitual absence without leave or permission is proved against the aggrieved workman Syed Pasha. I would like to point out here that in the claim statement itself, this charge has not been denied by the First Party. The relevant averment is in paragraph No. 4 of the claim statement and it is as under:—

> "As regards the absence, etc., the said worker has been singled out for this action. There are several workers who have been absent. The leave letters and oral representations of workers have not been taken into consideration at all."

This averment is a clear admission made by the First Party Union that Syed Pasha used to remain absent and many others also used to remain absent like him. The charge of habitual absence has not been denied at all. This averment supports the charge against Syed Pasha to some extent, even though it be, indirectly.

10. Syed Pasha was admittedly working in the Electrical Department of the Second Party. It appears that he had remained absent for 11 days in August 1963, without prior permission. With respect to this absence, the Management has issued him the warning Notice dated 14th/16th September 1963 (*Vide* Ex. M. 6). The Management has brought to his notice that remaining absent without leave or permission amounts to misconduct and warned him not to continue to do so in future.

11. Then he was again found to have remained absent without leave or permission for 5 days in November 1963 and 5 days in December 1963. Hence the Management gave him another warning on 21st December 1963, by the warning No. 2 (Ex. M. 7). The Management has said therein that he had been finally warned and if he still persisted in remaining absent wihout permission his services would be terminated.

12. These two warning notices appear to have had no effect on Syed Pasha. He was found to have remained absent again for 8 days in July, 7 days in August and 7 days in September, in the year 1964. Hence the management issued him a show cause notice on 20th/23rd October 1964 and called for his explanation for his absence (Ex. M. 10). He gave his explanation on 26th October 1964 (Ex. M. 11) stating that he used to get attacks of stomach-ache once a fortnight and they last for 2-3 days and that was the reason for his absence. He has said therein that he would take treatment for his ailment and assured the Management that he would not commit such mistake in future. Not being satisfied with this explanation, the Management charge-sheeted him on 29th/30th October 1964 and called upon him to face an enquiry (Ex. M. 12). On 17th November 1964, during the enquiry, Syed Pasha submitted (Ex. M. 13) that he was quite well and would assure the Management that he would not remain absent in future. Even then the Management did hold the domestic enquiry and punished him by keeping him under suspension for 7 days. The enquiry officer's findings dated 23rd November 1964 are at Ex. M. 9 and the order of suspension dated 11th/14th December 1964 is at Ex M. 8.

13. Then it was found by the Management that, on 16th January 1965, at about 2-50 A M. Syed Pasha was sleeping in the switch board room, while on duty. A domestic enquiry was held against him. He was found guilty. For this misconduct, he was punished by keeping him under suspension for three days. The documents relating to this enquiry are at Ex. M. 14 to M. 18 But this incident may be left out of consideration for determining the dispute in this case.

14. In spite of two warnings and one punishment of suspension for absence without leave or permission, things did not improve with Syed Pasha. Between January and June 1965, he was found to have absented himself from duty for 37 days in all. The Management, after bringing to his notice the dates on which he had remained absent without leave or permission, issued him a show cause Notice (Ex. M. 2) on 24th June 1965 and called for his explanation without 48 hours. Syed Pasha asked for extension of time (Ex. M. 19) to submit his explanation and this request was refused by the Management (Ex. M. 20). Thereafter a regular charge-sheet was issued to him by the Management (Ex. M. 3) on 12th July 1965. He received it on 13th July 1965 (Ex. M. 25). A regular domestic enquiry was held against him by

Doddannavar (M. W. 1). The records of enquiry are at Ex. M. 1. During the course of the enquiry, he admitted his absence without leave. The enquiry officer submitted his findings (Ex. M.5) on 21st July 1965. Accepting his findings the Works Manager passed an order on 26th July 1965 dismissing him from service.

15. The entire evidence against the aggrieved workman Syed Pasha is fully documented. Doddannavar M. W. 1 has also sworn to these facts. The time keeper Chandra Shekar (M. W. 2) has sworn that Syed Pasha was absent without leave or permission on the dates mentioned in Ex. M. 3. In the absence of any evidence to the contrary, I see no reason whatsoever to reject the testimony of Doddannavar and Chandra Shekar and the documents produced and proved in the case. I believe them and hold the charge as proved and record my finding on the first issue in the affirmative.

16. The First Party has not led any evidence to prove that Syed Pasha has been victimised for his Trade Union activities. Hence I record my finding on the second issue in the negative.

17. The punishments prescribed for misconduct by Standing Order XX-A are warnings, reprimands, fines, subject to the Payment of Wages Act, suspension and dismissal. Syed Pasha has been warned twice and suspended once for the misconduct of remaining absent without leave or permission, with no effect. In these circumstances, it cannot be said that the order of his dismissal is capricious, unjust, or shockingly severe. I think it proper to maintain it and hold that he is not entitled to reinstatement and record my finding on the third issue accordingly.

18. With respect to the point of dispute referred for adjudication in the order of reference, I hold that the Management of the Second Party was justified in dismissing the aggrieved workman Syed Pasha and make an award as under:

AWARD

The Reference is rejected. The demand for his reinstatement made by Syed Pasha and the First party Union on his behalf is also rejected. Parties do bear their own costs.

P. T. KADKOL,
Presiding Officer,
Labour Court, Bangalore.

APPENDIX

List of witnesses examined in this case on behalf of

I Party :—

NIL

IIParty :—

M. W. 1 Sri Doddannavar.
M. W. 2 Sri Chandra Sekhar.

List of documents admitted in this case on behalf of

I Party :—

NIL

II Party :—

Ex M.	1	Original Enquiry Papers.
,,	2	Show cause notice.
,,	3	Charge sheet.
,,	4	Order dated 26th July 1965.
,,	5	Findings dated 21st July 1965.
,,	6	Copy of warning memo.
,,	7	Second warning.
,,	8	Order suspending Syed Pasha for 7 days.
,,	9	Findings of the Enquiry Officer.
,,	10	Show cause notice.
,,	11	Explanation.
,,	12	Charge-sheet.
,,	13	Enquiry proceedings.
,,	14	Order suspending him for 3 days.
,,	15	Report of Enquiry Officer.
,,	16	Enquiry Proceedings.
,,	17	Charge sheet.
,,	18	Show cause notice.
,,	19	Reply.
,,	20	Management's reply.
,,	21	Union's letter.
,,	22	Copy of Management's reply.
,,	23	Union's letter.
,,	24	Standing Orders.

P. T. KADKOL,
Presiding Officer,
Labour Court, Bangalore.

ORDER.

Bangalore, dated 15th December 1966.

S. O. 116.—WHEREAS by State Government Order No. PLM 139 LLD 5, dated 14th October 1965, the Industrial Dispute between the Workmen and the Management of M/s. Mandya National Papers Ltd., Belagola, Mandya District was referred to the Labour Court, Bangalore for adjudication.

AND WHEREAS the Labour Court, has submitted to the State Government its award in respect of the said Industrial Dispute;

NOW, THEREFORE, in exercise of the powers conferred by section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said award as above, in the *Mysore Gazette*.

[No. LMA 439 LLD 65.]

By Order and in the name of the Governor of Mysore,

1704 G. G. PUROHIT, *Under Secretary*.